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ATTORNEYS FOR DEFENDANTS

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DISTRICT**

13 **DAVID HOUGH; ET AL**

14 *Plaintiffs,*

15 **v.**

16 **RYAN CARROLL; ET AL**

17 *Defendants.*

Case No.: 2:24-cv-02886-WLH

Assigned for all purposes to:
JUDGE WESLEY L. HSU

JURISDICTIONAL DEFENDANTS
RYAN CARROLL; MAX K. DAY;
MAX O. DAY; MICHAEL DAY;
YAX ECOMMERCE LLC;
PRECISION TRADING GROUP,
LLC; AND WA DISTRIBUTION
LLC'S OMNIBUS OBJECTIONS
TO PLAINTIFFS' SUBPOENAS
AND MOTION TO QUASH OR
MODIFY PLAINTIFFS'
SUBPOENAS

Hearing: 7/12/24, 1:30 PM PT

Action Filed: April 9, 2024
Trial Date: N/A

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

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4 **PLEASE TAKE NOTICE** that on July 12, 2024, at 1:30 p.m. or as soon
5 thereafter as this matter may be heard before Judge Wesley L. Hsu in the above-
6 entitled Court, located at 350 W. 1ST Street, Los Angeles, CA 90012. Jurisdictional
7 Defendants Ryan Carroll; Max K. Day; Max O. Day; Michael Day; Yax Ecommerce
8 LLC; Precision Trading Group, LLC; and WA Distribution LLC (the “**Original**
9 **Jurisdictional Defendants**”) will and hereby do move this Court for (1) An Order
10 quashing Plaintiffs David Hough, Amund Thompson, Isabel Ramos, Anthony
11 Ramos, and Michael Nibarger (“**Plaintiffs**”) Subpoenas, or in the alternative,
12 ordering Plaintiffs to modify said Subpoenas to comply with the terms of the
13 Discovery Order.
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17 This Motion is made pursuant to FED. R. CIV. P. 45(d)(3) and on the grounds
18 that Plaintiffs have no authority to issue subpoenas outside of the Court’s Express
19 Order.
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22 Dated: June 14, 2024.
23 Long Beach, CA

Respectfully submitted,

24 By: /s/ William H. Shibley
25 William H. Shibley
26 Attorney-in-Charge
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1 COME NOW SPECIALLY APPEARING ORIGINAL
2 JURISDICTIONAL DEFENDANTS RYAN CARROLL; MAX K. DAY; MAX
3 O. DAY; MICHAEL DAY; YAX ECOMMERCE LLC; PRECISION
4 TRADING GROUP, LLC; WA DISTRIBUTION LLC, and hereby files
5 *Jurisdictional Defendants' Objections to Plaintiffs' Subpoenas and Motion to*
6 *Quash or Modify Plaintiffs' Subpoenas* (“**Objections**”) and respectfully shows the
7 Court as follows:
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11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. FACTUAL AND PROCEDURAL BACKGROUND**

- 13
14 1. On April 9, 2024, Plaintiffs filed a Complaint against twenty (20) separate
15 Defendants. *See* Dkt. 1.
- 16 2. Plaintiffs asserted causes of action for conspiracy to commit fraud, fraudulent
17 transfers, conspiracy to violate California Business and Professions Code §17200,
18 and violations of securities laws, despite the fact that they each have valid written
19 contracts that prohibit such claims. *See* Dkt. 40.
- 20
21 3. On April 9, 2024, Plaintiffs also filed an *Ex Parte* Application for a
22 Temporary Restraining Order and an Order to Show Cause regarding a Preliminary
23 Injunction (“**Application**”), seeking the extraordinary remedy of a freeze on all of
24 the Defendants’ assets pre-judgment as well as a disclosure of all their financial
25 information pre-judgment. *See* Dkt. 9.
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1 4. On April 11, 2024, Defendants filed an Opposition to Plaintiffs' Application
2 (**"Opposition"**) on the grounds that (a) this Court lacked personal jurisdiction over
3 the Defendants; (b) the case should be compelled to binding arbitration pursuant to
4 the Plaintiffs' written contracts; (c) Plaintiffs failed to establish a likelihood of
5 success on the merits on any of their claims; (d) Plaintiffs' evidence of alleged
6 representations outside the written contracts constituted inadmissible parol
7 evidence; and other factors. *See* Dkt. 13.

10 5. On April 15, 2024, this Court issued a Temporary Restraining Order
11 (**"TRO"**), which held that the Court did not have personal jurisdiction over any of
12 the Defendants apart from the Defendants Ryan Carroll; Max O. Day; Max K. Day;
13 Michael Day; Yax Ecommerce LLC; WA Distribution LLC; and Precision Trading
14 Group, LLC based upon the facts available to the Court at the present time. *See* Dkt.
15 17.

18 6. On April 25, 2024, Plaintiffs filed their *Ex Parte* Motion for Leave to
19 Conduct Expedited Discovery (**"Discovery Motion"**). *See* Dkt. 25.

21 7. On April 26, 2024, the Original Jurisdictional Defendants submitted their
22 Supplemental Brief in Opposition to Plaintiffs' Application (**"Supplemental**
23 **Brief"**) in accordance with the Court's Minute Order. *See* Dkt. 31.

25 8. On April 28, 2024, the Original Jurisdictional Defendants filed a Motion to
26 Compel Arbitration and a Motion to Stay. *See* Dkt. 34. For purposes of judicial
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1 efficiency, Defendants hereby incorporate by reference the arguments previously
2 made in their previously filed Opposition (Dkt. 13), their Supplemental Brief (Dkt.
3 31), and their Motion to Compel Arbitration (Dkt. 34) and will not be restating all
4 of the arguments in their Opposition and Supplemental Brief here.
5

6 9. On April 30, 2024, Defendants filed their original Motion to Dismiss under
7 Rule 12(b)(2) for lack of personal jurisdiction and Rule 12(b)(6) for failure to state
8 a claim. *See* Dkt. 40. As set forth in Defendants' Opposition and the Jurisdictional
9 Defendants' Motion to Compel Arbitration, this Court lacks personal jurisdiction
10 over the Defendants and Plaintiffs have failed to state a claim upon which relief
11 may be granted on any of their causes of action.
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14 10. On May 1, 2024, the Court granted Plaintiffs' Discovery Motion, in part, and
15 ordered that Plaintiffs were permitted to serve an interrogatory "requiring
16 Jurisdictional Defendants to identify and describe any assets that, since May of
17 2022, have been (1) owned or controlled, in whole or in part, directly or indirectly,
18 by or for the benefit of any Jurisdictional Defendant; or (2) owned or controlled, in
19 whole or in part, directly or indirectly, by or for the benefit of any corporation,
20 partnership, asset protection trust, or other entity that is directly or indirectly owned,
21 managed, or controlled by any Jurisdictional Defendant." *See* Dkt. 42 ("**Discovery**
22 **Order**"). The Court also ordered that "Plaintiffs are given leave to issue subpoenas
23 to third-party financial institutions, requiring those institutions to produce account
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1 statements dating back to May of 2022, for any accounts that are required to be
2 identified in the interrogatory discussed immediately above.” *Id.*

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4 11. On May 1, 2024, Plaintiffs’ Counsel served their Interrogatory and First
5 Request for Production of Documents and Information to Original Jurisdictional
6 Defendants.

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8 12. On May 11, 2024, Defense Counsel served the Original Jurisdictional
9 Defendants’ Response to Plaintiffs’ Interrogatory and First Request for Documents
10 and Informational to Plaintiffs.

11
12 13. On May 17, 2024, Plaintiffs served their first set of twenty-nine (29)
13 Subpoenas Duces Tecum (the “**Original 29 Subpoenas**”). Plaintiffs served
14 subpoenas to the following entities: (1) Amazon.com, Inc., (2) Arrowhead Credit
15 Union; (3) Bank of America Corporation; (4) BitGo Holdings, Inc. (5) Bluevine
16 Inc.; (6) Capital One Financial Corporation; (7) Choice Financial Holdings, Inc.; (8)
17 Citigroup Inc.; (9) Coinbase Global, Inc.; (10) Credit Carma Savings/MVB Bank;
18 (11) Edward D. Jones & Co., L.P.; (12) Evolve Bancorp, Inc.; (13) Fidelity
19 Investments; (14) First Citizens Bank; (15) HSBC Bank USA; (16) JP Morgan
20 Chase & Co.; (17) Live Oak Bank; (18) Middlessex Federal Savings, F.A.; (19)
21 Northwestern Mutual Wealth Management Company; (20) Priority Union Trust;
22 (21) Prosperity Bancshares; (22) Quility Holdings LLC; (23) TD Bank; (24) Thread
23 Bank Corp.; (25) Transamerica Life Insurance Company; (26) Truist Financial
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1 Corporation; (27) U.S. Bancorp; (28) Wells Fargo Bank N.A.; and (29) Zions
2 Bancorporation.¹

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4 14. As the Original 29 Subpoenas vastly exceeded the limited scope permitted by
5 the Court in the Discovery Order, Defense Counsel wrote Plaintiffs' Counsel and
6 requested that Plaintiffs agree to modify their subpoenas in accordance with the
7 terms of the Court's Discovery Order, but he refused.
8

9 15. On May 29, 2024, Plaintiffs served twenty-eight (28) modified Subpoenas for
10 the original twenty-nine (29) subpoenaed entities.² However, the terms of the
11 modified Subpoenas were nearly identical and still exceeded the scope of the
12 Discovery Order. Thus, Defense Counsel again attempted to meet and confer with
13 Plaintiffs' Counsel later on May 29, 2024, and requested that he modify the
14 subpoenas to comply with the Discovery Order, but he once again refused. On June
15 7, 2024, Plaintiffs' Counsel filed two (2) additional modified subpoenas to Capital
16 One and Citi Bank, which also still exceed the terms of the Discovery Order.³ The
17 two modified subpoenas served on June 7, 2024 and the 29 modified subpoenas
18 served on May 29, 2024 are hereinafter collectively referred to as the "**Subpoenas**".
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27 ¹ The Original 29 Subpoenas are attached hereto as **Exhibit A**.

28 ² The twenty-eight (28) modified subpoenas served by Plaintiffs on May 29, 2024 are attached hereto as **Exhibit B**.

³ The two (2) modified subpoenas served by Plaintiffs on June 7, 2024 are attached hereto as **Exhibit C**.

1 16. The Original Jurisdictional Defendants thus hereby file their Objections to
2 Plaintiffs' Subpoenas and Motion to Quash or Modify Plaintiffs' Subpoenas
3 pursuant to Federal Rule of Civil Procedure 45(d)(3).
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5 **II. ARGUMENT AND AUTHORITIES**

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7 **A. Plaintiffs Have No Authority to Issue Subpoenas Outside of the Court's** 8 **Express Order**

9 17. "Rule 26(d) of the Federal Rules of Civil Procedure generally provides that
10 formal discovery will not commence until after the parties have conferred as
11 required by Rule 26(f)." *Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1066
12 (C.D. Cal. 2009) (citations omitted). However, courts may permit expedited
13 discovery before the Rule 26(f) conference upon a showing of "good cause." *Id.*;
14 (Citing *Qwest Commc'ns Int'l, Inc. v. WorldQuest Networks, Inc.*, 213 F.R.D. 418,
15 419 (D.Colo.2003) [The "party seeking expedited discovery in advance of [the]
16 Rule 26(f) conference has the burden of showing good cause for the requested
17 departure from usual discovery procedures."]; *Merrill Lynch, Pierce, Fenner &*
18 *Smith v. O'Connor*, 194 F.R.D. 618, 623 (N.D.Ill.2000) ["Expedited discovery is
19 not the norm. Plaintiff must make some *prima facie* showing of the need for the
20 expedited discovery."]).
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22 18. "Good cause exists where the need for expedited discovery, in consideration
23 of the administration of justice, outweighs the prejudice to the responding party."
24 *Id.*
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1 19. “[E]xpedited discovery is not automatically granted merely because a party
2 seeks a preliminary injunction.” *Id.* at 1066-1067. (*Citing Disability Rights Council*
3 *of Greater Wash. v. Wash. Metro. Area Transit Auth.*, 234 F.R.D. 4, 7 (D.D.C.2006)
4 [“Surely, plaintiffs are not seeking expedited discovery to gain evidence to get the
5 court to preserve the status quo. They want to gather all the evidence they would
6 need to radically transform the status quo, on an expedited basis. But, that is not the
7 purpose of a preliminary injunction, nor of the limited discovery that the courts
8 traditionally permit a plaintiff to have to secure it.”]; *Dimension Data N. Am. v.*
9 *NetStar-1, Inc.*, 226 F.R.D. 528, 532 (E.D.N.C.2005) (denying request for
10 expedited discovery in part because “the discovery requested is not narrowly
11 tailored to obtain information relevant to a preliminary injunction determination”
12 and because “plaintiff has not made an adequate showing that it will be irreparably
13 harmed by delaying the broad-based discovery requested until after the initial
14 conference between the parties pursuant to Rule 26”).

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20 20. It is clear from Rule 26, the well-established case law, and this Court’s Order
21 that Plaintiffs had no authority to serve subpoenas or any other written discovery
22 prior to the Rule 26(f) conference, absent the limited Discovery Order issued by the
23 Court. Yet, Plaintiffs issued broad-sweeping subpoenas to 29 entities that far
24 exceed the scope of the Court’s Discovery Order.
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B. Plaintiffs' Subpoenas Exceeded the Scope of the Discovery Order

21. The attachment for all of Plaintiffs' Subpoenas, which states the scope of said Subpoenas is identical. *See* Attachment A to Exhibit B. The Subpoenas request that the subpoenaed entities produce "[a]ll documents reflecting action upon assets or accounts held for the benefit of or controlled by, in whole or in part, any individuals or entities listed in Attachment A ... "Documents" includes without limitation: account statements, wire transfer records, checks, correspondence, and account opening documents." *Id.* The Discovery Order unambiguously limited this discovery to account statements for assets identified in response to Plaintiffs' Interrogatory from May of 2022 to the present. Yet, in direct contradiction to the terms of the Discovery Order, Plaintiffs are insisting upon seeking discovery of all documents reflecting "action upon assets or accounts," including "wire transfer records, checks, correspondence, and account opening documents." *Id.*

22. The list of individuals and entities for which Plaintiffs are seeking financial records from the subpoenaed entities also includes all Defendants in this litigation and numerous individuals and entities who are not even a party to this litigation, not just the Original Jurisdictional Defendants, as permitted by the Court. The Subpoenas also seek records from numerous entities, who not only were not identified in response to the Interrogatory, but who are not even banks or financial institutions. For example, Plaintiffs seek to subpoena records from Stripe, Inc. and

1 Total-Apps, Inc., who are payment processors who process credit cards and other
2 payment methods for businesses, not financial institutions that hold funds. *See* Ex.
3
4 B. Plaintiffs also seek records from Quickbooks, which is an accounting software
5 application, and HubSpot, which is a marketing and sales software application. The
6 terms of the Discovery Order were clear, yet Plaintiffs refuse to abide by it and
7
8 have cast a much wider net than the one permitted by the Court.

9 23. Further, Plaintiffs improperly include a plethora of personal information about
10 each of the Defendants, including confidential financial information in their
11 Subpoenas. There is no legitimate reason for the inclusion of this information in a
12 subpoena, which should be a simple and straightforward request for account
13 statements for previously identified financial accounts.
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16 **C. The Court Has Authority to Modify or Quash the Subpoenas**

17 24. Pursuant to Federal Rule of Civil Procedure 45(d)(3), a Court may quash or
18 modify a subpoena that “requires disclosure of privileged or other protected matter
19 ... or (iv) subjects a person to undue burden.” *See* FED. R. CIV. P. 45(d)(3). The
20 subpoenaed records involve the Defendants’ personal and confidential financial
21 information and is far beyond the limited expedited discovery permitted by this
22 Court. Thus, the Original Jurisdictional Defendants request that the Court quash the
23 Subpoenas or order that Plaintiff modify them to comply with the express terms of
24 the Discovery Order.
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25. In meeting and conferring with Plaintiffs' Counsel, he claims that the Original Jurisdictional Defendants lack standing to challenge these subpoenas, however this is flatly incorrect. While "[o]rdinarily a party has no standing to seek to quash a subpoena issued to someone who is not a party to the action," a party does have standing if "the objecting party claims some personal right or privilege with regard to the documents sought." *Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d 965, 973 (C.D. Cal. 2010) (collecting cases). In *Crispin*, this District specifically cited to a case from another district wherein the court held that "[p]ersonal rights claimed with respect to bank account records give a party sufficient standing to challenge a third-party subpoena served upon financial institutions holding such information." *Schmulovich v. 1161 Rt. 9 LLC*, Civil Action No. 07-597(FLW), 2007 WL 2362598, *2 (D.N.J. Aug. 15, 2007). Numerous other district courts have also held that parties have standing to quash or modify subpoenas which seek their financial information, including bank records. *See, e.g., Transcore, Inc. v. Furney Charters, Inc.*, 212 F.R.D. 588, 590-91 (D. Kan. 2003) (finding that the defendant has a "personal right with respect to its bank account records at the subpoenaed banks, and this right gives it standing to move to quash the subpoenas"). Further, this District, in *Packaging Corp. of Am. v. Bonert's, Inc.*, held that a party did have standing to quash a subpoena directed to a non-party which sought their personal financial information, including bank records. No. 816CV00818JVSKSX, 2019 WL

1 1123165, at *4 (C.D. Cal. Mar. 11, 2019). Therefore, the Original Jurisdictional
2 Defendants have standing to object to these Subpoenas and thus seek an order from
3 the Court quashing or modifying said Subpoenas to comply with the Court's
4 Discovery Order in this case.
5

6 7 **III. CONCLUSION**

8 26. Based on the foregoing and for good cause shown, Original Jurisdictional
9 Defendants respectfully requests that this Court grant Original Jurisdictional
10 Defendants' Objections to Plaintiffs' Subpoenas and Motion to Quash or Modify
11 Plaintiffs' Subpoenas, and enter an Order quashing Plaintiffs' Subpoenas, or in the
12 alternative ordering Plaintiffs to modify said Subpoenas to comply with the terms of
13 the Discovery Order, and for such other and further relief to which the Original
14 Jurisdictional Defendants may show themselves to be justly entitled.
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19 Dated: June 14, 2024.

Respectfully submitted,

20 By: /s/ William H. Shibley

21 William H. Shibley
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1 **CERTIFICATE OF COMPLIANCE**

2 The undersigned, counsel of record for Original Jurisdictional Defendants,
3 certifies that this Motion contains 2,339 words, which complies with the word limit
4 of L.R. 11-6.1

5 /s/ William H. Shibley
6 William H. Shibley
7
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10 **CERTIFICATE OF CONFERENCE**

11 I hereby certify that I conferred with counsel for Plaintiffs via email and letter
12 on May 29, 2024, regarding the substance of the foregoing motion.
13

14 /s/ William H. Shibley
15 William H. Shibley
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19 **CERTIFICATE OF SERVICE**

20 I hereby certify that a true and correct copy of the foregoing document, and
21 any attachments, will be served to counsel of record, in accordance with the
22 governing rules of procedure regarding service in this court on this **June 14, 2024**,
23 via email as follows:

24 /s/ William H. Shibley
25 William H. Shibley
26
27
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